SPECIAL MEETING

BOARD OF REGENTS
NEVADA SYSTEM OF HIGHER EDUCATION

System Administration, Las Vegas
5550 W. Flamingo Road, Suite C-1, Conference Room
Las Vegas, NV 89103

Friday, July 26, 2013, 10:00 a.m.

Video Conference Connection to:
System Administration, Reno
2601 Enterprise Road, Conference Room
and
Great Basin College, Elko
1500 College Parkway, Berg Hall Conference Room

Members Present:	Mr. Kevin J. Page, Chairman	
	Mr. Rick Trachok, Vice Chairman	
	Dr. Andrea Anderson	*{via telephone}*
	Mr. Robert Blakely	
	Mr. Cedric Crear	
	Dr. Mark W. Doubrava	
	Dr. Jason Geddes	
	Mr. Ron Knecht	
	Mr. James Dean Leavitt	
	Mr. Kevin C. Melcher	
	Dr. Jack Lund Schofield	
	Ms. Allison Stephens	
	Mr. Michael B. Wixom	

Others Present:	Mr. Daniel J. Klaich, Chancellor
	Ms. Brooke Nielsen, Vice Chancellor, Legal Affairs
	Ms. Renee Yackira, Vice Chancellor, Administration and Operations
	Mr. Scott Wasserman, Chief of Staff and Special Counsel to the Board
	Dr. Neal J. Smatresk, President, UNLV

Also present were NSHE Faculty Senate Chair Dani Chandler and UNR ASUN President Ziad Rashdan.

Chairman Page called the meeting to order on Friday, July 26, 2013, at 10:00 a.m. with all members present except for Regent Knecht.

1. <u>Information Only – Public Comment</u> *(Agenda Item #1)* - Former Regent Mark Alden asked the full Board to support the School of Medicine and the University Medical Center in southern Nevada.

Regent Knecht entered the meeting.

Regent Knecht requested a point of personal privilege to honor the passing of Mr. Frank Matthews, long-time Nevada resident who served both his country and the state of Nevada.

Regent Crear requested a point of personal privilege to honor the passing of Reverend Dr. Marion D. Bennett, long-time Nevada resident who served the Las Vegas community.

Chairman Page observed a moment of silence in honor of the passing of both gentlemen.

2. <u>Approved – Midtown Park Memorandum of Understanding, UNLV</u> *(Agenda Item #2)* – The Board of Regents approved a Memorandum of Understanding (MOU) for the proposed Midtown Park Project which will encompass the redevelopment of property immediately north of the main campus into new student housing for the University of Nevada, Las Vegas *(Refs. BOR-2a, BOR-2b, BOR-2c and BOR-2d on file in the Board Office)*.

President Smatresk said UNLV's incoming class is approaching and could exceed the largest number of students ever enrolled, including an increase from previous years in the number of merit scholars and non-residential student populations. UNLV's dormitories are full for the first time in approximately 10 years and there is a waiting list.

With the demand for residential housing in mind, UNLV has brought to the Board a proposal for a Memorandum of Understanding (MOU) in which UNLV will be offered the opportunity to work with its current housing partner, AVS (a partnership of the American Nevada Company, Vista and The Scion Group) and Educational Facilities Development Services (EFDS). The MOU is the first step in the project and will facilitate the strategic acquisition of 14 acres of land immediately north of the main campus, across Cottage Grove, to offer a lease back arrangement to a group who will then develop the property with an initial phase of 2,000 beds and a subsequent phase with as many as 3.000 beds. The project calls for apartment-style dorms and living facilities to accommodate upper-division, married or graduate students as well as faculty or staff in combinations of four, two or one rooms.

President Smatresk said the project represents a critical and strategic opportunity for UNLV to expand its footprint and increase its services and students.

Mr. Michael Saltman said he has been working on this project for more than 30 years and the proposal before the Board represented a major personal milestone. He introduced his team, son and legacy heir of the project, David Saltman of The Vista Group; Bill Ralston, American Nevada Company; Steven Nielsen, Senior Vice President for Development, EFDS; William ("Bill") Beal, Senior Vice President for Finance, EFDS; Gary Aller,

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President, Project Executive for Bechtel Group of Companies, EFDS; Jim Jacobs, CEO of CORE Construction Company; Rob Ronstein, CEO of The Scion Group; and Brent McPherson, Director of Property Operations –On Campus at The Scion Group-AVS Housing Group.

Mr. Gerry Bomotti, Senior Vice President of Finance and Administration at UNLV, reported two years ago UNLV underwent a national solicitation to enter into a private partnership for on-campus housing. A number of vendor proposals were received with AVS awarded the contract because it had the strongest proposal as well as local and national expertise in the area of student housing. The partnership involved three main issues: 1) updating UNLV's Campus Master Plan, 2) management of UNLV's on-campus freshman housing *(effective January 1, 2013)*, and 3) development of new student housing, preferably off the main campus *(due to space limitations and the hope the partner would take on the financing responsibility and risk)* but close enough to effectively allow UNLV to market it as student housing.

Mr. Bomotti said AVS brought forward a proposal in March 2013 specifically targeting the current University Park Apartment Complex *(purchased by a partnership between American Nevada and Vista in 2006)* immediately north of the main campus for redevelopment into new student housing for UNLV. UNLV, in conjunction with AVS and EFDS, has brought a proposed MOU to the Board of Regents for its consideration. The MOU would be the first step in defining general parameters for proceeding on the Midtown Park Project, and would require several additional Board approvals before the project is finalized.

Mr. Bomotti said the proposal allows UNLV to remain at arms-length from the financing of the project. He noted the new housing project will not house freshman so as not to compete with existing freshman housing.

Mr. Bomotti said UNLV hoped to receive an appraisal by the end of the following week to determine if the property can be purchased for the proposed $17 million. By the end of August, UNLV will bring before the Board an independent study from Mr. John Restrepo to determine if any existing bond financing approved by the Board would compete with the new project. Mr. Bomotti expected the outcome of Mr. Restrepo's report would be positive but emphasized the report is being prepared independently.

Ms. Elda Sidu, General Counsel for UNLV, requested an amendment to the proposed MOU, specifically Section 4.1.3 to state *"On the Closing Date, (i) fee simple title to the Real Property comprising the Site shall be conveyed to UNLV by warranty **<u>or other type of</u>** deed in form and substance satisfactory to UNLV and recorded in the Official Records of Clark County, State of Nevada."* Ms. Sidu said the requested amendment would allow more flexibility in the negotiation process.

Regent Wixom asked who will be performing the non-competition study. Mr. Bomotti replied Mr. Restrepo is working with NSHE Bond Counsel John Sweindseid to prepare the non-competition analysis. If Mr. Restrepo's report reflects any violation of existing bond covenants then further Board action would be required.

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Regent Crear asked if UNLV was purchasing the land for $17 million. Mr. Bomotti responded that was correct.

Regent Crear asked where the $17 million would come from. Mr. Bomotti responded the funds were from multiple sources: 1) Over $8 million will come from accumulated monies in the UNLV General Improvement Fund approved by the Board in 2000. Board policy states one dollar per credit hour of the General Improvement Fund can be allocated at the discretion of the president. In 2000, former UNLV President Carol Harter allocated those funds to the Land Acquisition Account. The allocation has not been changed, no funds have been spent and the funds have accumulated to over $8 million; 2) the remaining approximate $2.9 million from the sale of the Rainbow Gardens land; 3) $4 million from UNLV's Capital Improvement Fund. Mr. Bomotti said Governor Sandoval approved a late session change in the 2011 Session of the Nevada Legislature to approve continuation of taxes which would have otherwise sunset, reducing the projected budget reductions from 20 percent to 10 percent. Even with the lower reductions, UNLV had remained cautious with its Capital Improvement Fund; and 4) UNLV charges non-state self-supporting accounts three and one half percent of their gross revenue to cover overhead expenses such as payroll and facilities. The account, currently containing $1.8 million, will be swept.

Regent Crear asked if the appraisal was anticipated to come in at approximately $20 million. Mr. Bomotti said the appraisal amount is still unknown. However, the results of an independent appraisal should be received by the end of the following week.

Regent Crear asked who will receive the equity of the difference between the appraisal and the proposed $17 million purchase price. Mr. Bomotti responded the structure involves EFDS, working with a tax-exempt foundation, purchasing the property from AVS through tax-exempt financing. EFDS then immediately pays' off the note and receives ownership of the land. EFDS then sells the land to UNLV for $17 million.

Regent Crear asked if the land appraisal comes in at $24 million, and EFDS pays $24 million, will EFDS turn around and sell the land to UNLV for $17 million. Mr. Saltman responded there will be a long term note between EFDS and the Vista Group for the balance to be paid through project revenues.

Regent Anderson asked what the appraisal needs to come in at. Mr. Bomotti responded, for UNLV's purposes, the appraisal needs to come in at a minimum of $17 million to support purchasing the property. EFDS and AVS will initiate a separate appraisal for their separate agreement structure.

Regent Crear asked if CORE Construction has already been selected as the builder. Mr. Bomotti responded UNLV will only be involved in the purchase of the land and not in the risk of construction or the financing operation. He said CORE Construction was selected as the builder by EFDS and AVS.

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Regent Crear asked if construction of the building would fall under the Board of Regents' supply chain inclusion policies. President Smatresk said those policies would apply in the ground leaseback between UNLV and EFDS. However, President Smatresk said there have been significant conversations regarding expectations related to prevailing wage and project labor agreements. Mr. Bomotti said since the funds for construction are not through the University the construction does not fall under the Board's policy but UNLV has asked EFDS to be compliant with Board policy and provide the data normally reported to the Board.

Regent Crear said there was no accountability in simply asking for an outside company to comply with Board policy. The Cultural Diversity Committee has worked for years on the Board's Supplier Diversity Spending and Inclusion Policy to address tier 1 and tier 2 spending on minority-, women- or veteran-owned and in-state businesses. He felt it was important for any construction project on Board of Regents property to be held to the Board's policies. He asked how the Board of Regents can require, and not just request, its policies be followed.

Mr. Steve Nielsen, Senior Vice President of Development, EFDS, said the project involves using private capital on a public project. The closer the Board of Regents gets to the project, the closer the project will come to finding its way onto UNLV's books. He said EFDS has worked with its partners on addressing concerns in other public-private partnerships such as at Arizona State University. EFDS wants the System to be proud of this project but the project will be privately owned for the entire length of its construction. He said EFDS looks at local hiring and subcontractors and will consider how best to meet the requested guidelines.

Regent Crear said he supported the project but was concerned the public Board of Regents' policies and guidelines would not be included in private agreements.

Mr. Nielsen said because EFDS will borrow 100 percent of the project's funding, it has to provide a guaranteed maximum price. The work will be conducted through a design-build agreement which means there will be no change orders. He asked the Board to remember contracting will be done through EFDS and not through UNLV.

Regent Crear asked Mr. Nielsen if he was saying EFDS will establish goals to reach minority-owned and local businesses. Mr. Nielsen said EFDS can add those goals to its contracts with CORE Construction.

Regent Crear asked Mr. Nielsen if EFDS contracts will include established goals to meet NSHE standards.

Regent Wixom said if NSHE imposes its requirements on EFDS then EFDS jeopardizes its ability to seek tax-exempt financing.

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Regent Crear asked Mr. Nielsen if EFDS will include NSHE's supply chain diversity goals in its contracts. Mr. Nielsen responded, to the extent possible, EFDS will look at including NSHE's supply chain inclusion goals in its contracts with the builder.

Mr. Jim Jacobs, CEO of CORE Construction, said his company is a national contractor with a long-standing established office in the Las Vegas area and is familiar with the type of requirements being discussed. CORE Construction is also the fifth largest school builder in the country and stringent requirements and goals are common but it is important the requirements and goals are known.

Regent Crear said since the builder was contracted through the private side of a public-private partnership, there are no requirements to include goals set by the state of Nevada. He asked how the Board of Regents can guarantee local minority-owned businesses in the state of Nevada have an opportunity to participate on this project. Mr. Nielsen said though a guarantee could not be provided, he assured Regent Crear the partners will work as a team.

Regent Stephens said she was concerned about the appearance of the "good-ole'-boy" network. Secondly, she was concerned for UNLV's ability to come up with funding sources particularly since students are asked time and again to bear the brunt of budgetary shortfalls.

Regent Stephens asked the private partners to understand the Regents' perspective coming from a system-wide Board of Regents elected by and accountable to the State's constituents. She was in favor of the Midtown Park Project and would support the MOU knowing various aspects of the project will require Board approval as the project moves forward.

Regent Leavitt asked why AVS and EFDS felt it in the System's and public's best interest to follow prevailing wage and project labor agreement guidelines and what the potential savings would be without the inclusion of those guidelines. Mr. Bomotti responded EFDS may well have not put the project together without prevailing wage. However, UNLV Legal Counsel looked at the project carefully and determined prevailing wage was required because the Board, as a public entity, would eventually own the property. EFDS has disclosed it will cost the project approximately $19 million to include prevailing wage.

Ms. Sidu said, in addition to other factors, it was felt prevailing wage should apply because NSHE will own the property itself during construction.

Regent Blakely said he supports the inclusion of prevailing wage. He felt the taxpayers appear to gain from this project and noted UNLV has an almost immediate need for more housing.

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Regent Blakely moved approval of a Memorandum of Understanding (MOU) for the proposed Midtown Park Project which will encompass the redevelopment of property immediately north of the main campus into new student housing for the University of Nevada, Las Vegas with an amendment to Section 4.1.3 to state *"On the Closing Date, (i) fee simple title to the Real Property comprising the Site shall be conveyed to UNLV by warranty* ***or other type of*** *deed in form and substance satisfactory to UNLV and recorded in the Official Records of Clark County, State of Nevada."* Regent Stephens seconded.

Chairman Page left the meeting.

Regent Knecht asked Mr. Bomotti if UNLV will choose the appraiser and, if so, who will make the selection, when the selection will be made and how it will be guaranteed the selected appraisal will be arms-length from the private parties involved. Mr. Bomotti responded UNLV has hired and provided its own instructions to the selected appraiser, Mr. Tio DiFederico. EFDS and AV will handle their own appraisal separately.

Regent Knecht asked what disclosures have been made by UNLV's appraiser to be certain there was no conflict of interest with the other partners. Mr. Bomotti said he had provided a full background of the situation to Mr. DiFederico to make certain it was understood UNLV would rely upon an independent evaluation. He said other appraisers had been considered but were disregarded due to timing or potential conflicts.

Regent Knecht said since the appraiser has already been chosen, the Board of Regents are relying essentially upon Mr. Bomotti and UNLV's representation to ensure due diligence. Mr. Bomotti replied Regent Knecht's statement was correct and routine as evidenced from other projects.

Regent Knecht asked if Wells Fargo currently held the property's title. Mr. Bomotti said that was correct.

Regent Knecht asked if Wells Fargo was otherwise involved with any business on the UNLV campus. Mr. Bomotti responded NSHE uses Wells Fargo for credit card processing. In addition, Wells Fargo may submit a proposal to UNLV's solicitation for a bank in its student union. He was not aware of other dealings.

Ms. Sidu said Wells Fargo may provide broker services through a recent solicitation for student health insurance. Mr. Bomotti clarified the student health insurance would also be a System-wide relationship.

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Regent Knecht said the briefing paper reflects UNLV's partnership with AVS for management of on-campus student housing (effective January 1, 2013) was finalized after AVS assisted with the UNLV Campus Master Plan. Regent Knecht asked if the contract with AVS for the Campus Master Plan was originally presented to the Board for approval. Mr. Bomotti said the contract for $26,000 may have gone to the Chancellor for approval but it was not presented to the Board of Regents under standard Board policy.

Regent Knecht asked if other proposals for UNLV's Campus Master Plan were considered at the time the contract was given to AVS. Mr. Bomotti said the Campus Master Plan was one aspect of a public solicitation from which AVS was selected. Every solicitation was screened for background, experience, expertise relative to master planning, operation of on-campus housing and for ability to bring future opportunities for expansion of off-campus housing. AVS received the award because it has national and local expertise. The original solicitation contemplated multiple contracts of which master planning was one.

Regent Knecht asked how many other parties responded to the public solicitation. Mr. Bomotti said there were eight total respondents.

Regent Knecht asked if the pubic solicitation indicated the possibility of the relationship growing in the same direction as it was currently with AVS. Mr. Bomotti replied yes, adding some early portions of the proposed MOU were taken directly from the public solicitation.

Regent Knecht asked Mr. Bomotti if enough public disclosure had been conducted so no claims could be made a sole-source arrangement had been made with a local company which then allowed the local company to leverage one project into a much larger project. Mr. Bomotti responded an evaluation of respondents to a public solicitation was conducted and he was comfortable the process had been open and fair.

Regent Knecht asked for the record to be clear in regard to the fairness of the entire process up to this point and going forward.

Regent Knecht asked Mr. Bomotti to elaborate on Mr. Restrepo's role in the process. Mr. Bomotti said the System's bond counsel pointed out there are two sections in previously approved bond covenants stating the Board of Regents will not approve financing for new projects negatively competing with existing projects financed through tax-exempt financing. Mr. Restrepo has been asked to conduct an independent assessment to determine if this particular agreement will conflict with existing bond projects already approved by the Board and to report those findings back to the Board of Regents. If a conflict is determined to exist the Board will have to take appropriate action in a public meeting to reject or accept the report's findings.

Regent Knecht asked if UNLV sufficiently discussed any prior or current relationship Mr. Restrepo may have with any of the involved partners to be certain Mr. Restrepo's

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opinion will not be subject to reasonable challenge based on a conflict of interest. Mr. Bomotti said both he and Mr. Swendseid discussed the particular requirements of the project with Mr. Restrepo and determined there were no existing problems and Mr. Restrepo met the requirements to bring an independent report back to the Board of Regents.

Regent Knecht asked what happens if it becomes infeasible to open the facility in time for academic year 2015 as proposed by EFDS. Mr. Bomotti said if the MOU is approved but UNLV cannot complete its responsibilities in a timely manner then one possibility is the project will end and UNLV will owe EFDS 50 percent of expenses to date, capped at $250,000.

Regent Knecht asked if the System will owe only if the System pulls the plug on the project and whether the System would not owe anything if any of the other partners pull the plug. Mr. Bomotti replied that was correct. If the project documents cannot be completed there may be discussions on who caused the delay. However, EFDS has agreed to cover the risk if the project is not operational by the fall of 2015. Mr. Nielsen said a schedule has been included in the MOU for a specific reason. He said it is a fatal flaw for higher education dormitories not to open in time for the Fall semester. EFDS will move the project forward aggressively with financing scheduled to be secured by the first week in November 2013.

Regent Knecht asked if he heard correctly the difference in applying prevailing wage or project labor agreement guidelines was $19 million. Mr. Bomotti said it was estimated the prevailing wage requirement will add $19 million to project costs. Any additional costs for inclusion of project labor agreement guidelines have not been taken into consideration.

Regent Knecht asked if the increase in project costs will be borne by the students or taxpayers or if the project developers will bear the burden. Mr. Bomotti said the original budget was in the range of $10 to $12 million. The proposed $17 million purchase price is the result of rebalancing having taken prevailing wage and other elements into consideration. EFDS has also taken other options into consideration such as purchasing materials through its own tax-exempt foundation. Mr. Bomotti said no General Fund monies will be used. However, the funds are public funds in the sense money is coming from the University.

Regent Knecht asked if the $5 to $7 million difference between the original $10 to $12 million budget and the proposed $17 million budget was partly, if not wholly, reflected in the inclusion of prevailing wage and so forth. Mr. Bomotti said that was a fair summary.

Regent Knecht said even though General Fund monies were not being used, NSHE public funds from various accounts as outlined earlier in the discussion by Mr. Bomotti were being used. Mr. Bomotti said that was a fair summary. UNLV's review of applicable state statutes revealed prevailing wage was clearly required for this project.

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Regent Knecht asked how the issue and resolution of prevailing wage will impact the students and families who will pay for the housing. He asked how the housing prices will be set. Mr. Bomotti replied UNLV, through AVS, will market and lease the property as it does with the existing on-campus freshman housing. However, because of the arms-length agreement with independent private financing, UNLV will not want to be involved in setting the rates for the new housing. UNLV will continue to set the rates for the existing on-campus freshman housing only. The demand study for the housing as contracted through EFDS will include a review of its rates. In the end those rates will have to meet market conditions or be adjusted accordingly.

Regent Knecht asked if any cost factors will lie with the developers. Mr. Bomotti said the project was clearly non-recourse for the University. The risk lies with the developer's proposed tax-exempt financing. Under tax-exempt financing, any net revenue is required to apply to early retirement of the bond which would only benefit the University. EFDS will have to adjust its rates in order to meet its own financial liabilities if the rates turn out to have initially been set too high.

Regent Knecht asked how comfortable Mr. Bomotti was that the increasing number of projects being undertaken by the James Megellas Foundation, Inc. and EFDS will not impact UNLV and the project will be done on time and to the System's satisfaction. Mr. Bomotti said UNLV was comfortable and confident with the accomplished people from both groups.

Regent Knecht said he would support the proposed MOU as a limited next step in allowing the Board to pursue the project further based on the advice and due diligence performed by Mr. Bomotti and UNLV, on the good fortune the System has experienced thus far with the local AVS partners, on the prior success of the principals involved with EFDS, on the fact the System's exposure and liability is limited and because the need for housing on the UNLV campus is substantial.

Upon a roll call vote, motion carried. Regents Schofield, Stephens, Wixom, Trachok, Anderson, Blakely, Crear, Doubrava, Geddes, Knecht, Leavitt and Melcher voted yes. Regent Page was absent.

3. Information Only – Public Comment *(Agenda Item #4)* - Regent Leavitt thanked Mr. Saltman for his vision and involvement in the project.

4. Information Only – New Business *(Agenda Item #3)* - Regent Stephens asked the Board to consider creating a status for Regent-emeritus at a future meeting.

3. Information Only – Public Comment *(Agenda Item #4) – (Cont'd.)*

   Mr. Douglas Grassi of Elite SDVOB *(Service Disabled Veteran Owned Businesses)* addressed the Board to respectfully request inclusion of those represented by the SDVOB in setting goals for future projects.

The meeting adjourned at 11:32 a.m.

Prepared by:	Jessica C. McMullen Special Assistant and Coordinator to the Board of Regents
Submitted by:	R. Scott Young Deputy Chief of Staff to the Board of Regents and Scott G. Wasserman Chief of Staff and Special Counsel to the Board of Regents

Approved by the Board of Regents at its October 18, 2013, meeting.